

**REMARKS**

Claims 5 and 8 are pending in this application.

**I. Rejection Under 35 U.S.C. §103**

The Office Action rejects claims 5 and 8 under 35 U.S.C. §103(a) as having been obvious over U.S. Patent Application Publication No. 2003/0207979 to Sato et al. ("Sato") in view of U.S. Patent Application Publication No. 2002/0013393 to Lewin ("Lewin") and U.S. Patent Application Publication No. 2003/0207106 to Nakamura et al. ("Nakamura"). The rejection is respectfully traversed.

Claims 5 and 8 are each directed to a wiring harness comprising a wire bundle that comprises non-halogenous insulated wires. The non-halogenous insulated wires each comprise a conductor covered with a crosslinked flame-retardant resin composition. The crosslinked flame-retardant resin composition comprises zinc sulfide, among other things. The claimed wiring harnesses comprising the recited crosslinked flame-retardant resin composition produce unexpected results, demonstrating that the claimed wiring harnesses would not have been obvious.

Specifically, non-halogenous insulated wires that use the recited crosslinked flame-retardant resin composition comprising zinc sulfide are compatible with vinyl chloride insulated wires, which compatibility is completely unexpected over the teachings of Sato, Lewin, and Nakamura. Applicants provided a detailed explanation of the experimental evidence set forth in the specification that shows the unexpected results in the April 5, 2010 Amendment After Final Rejection, and further commented on the sufficiency of the experimental evidence in the June 4, 2010 Request for Reconsideration.

In response, the present Office Action asserts that "the arguments provided by the applicant regarding the above compound affecting compatibility must be supported by a

declaration or affidavit." See pages 8-10. Accordingly, submitted herewith is a Declaration Under 37 C.F.R. §1.132 signed by Masashi Sato.

The Declaration shows, among other things, that an ordinarily skilled artisan would have understood that: (A) the modification of EVA mainly has an effect on the mechanical properties of the composition, such as wear resistance, and would not have had any material effect on compatibility; (B) the amount of acryl silane has an effect on wear resistance and bleeding and would not have had any material effect on compatibility; (C) phosphorous antioxidant, phenolic antioxidant, and cross-linking agent are all additives that would not have had any material effect on compatibility; (D) magnesium hydroxide and acryl silane are exemplary of the whole class of metallic hydrates and organo-functional coupling agent, respectively; (E) metallic hydrates have an effect on flame retardancy and would not have had any material effect on compatibility; and (F) coupling agents have an effect on wear resistance and bleeding and would not have had any material effect on compatibility. See Item 10. Accordingly, the arguments are supported by the Declaration.

With respect to the Office Action's assertion that "there is no evidence that magnesium hydroxide and acryl silane are exemplary of an entire class of metallic hydrates and organo functional coupling agents," statement (D) is compelling evidence that this is the case, especially because the statement is with respect to the understanding of an ordinarily skilled artisan, which is central to the determination of whether evidence is commensurate in scope with the claims. See MPEP §2145 (stating that "an exemplary showing may be sufficient to establish a reasonable correlation between the showing and the entire scope of the clam, when viewed by a skilled artisan" (emphasis added)).

Additionally, the Declaration shows the relevance of Example 8 (in comparison to Comparative Example 8) with respect to Applicants' showing of unexpected results. Specifically, Comparative Example 8 is different from Example 8 in that the crosslinked

flame-retardant composition of Comparative Example 8 does not contain zinc sulfide, whereas the crosslinked flame-retardant composition of Example 8 contains zinc sulfide. A comparison between Example 8 and Comparative Example 8 demonstrates that, in the absence of zinc sulfide, compatibility is not achieved because Example 8 passed both compatibility test conditions A and B whereas Comparative Example 8 failed both test conditions A and B. See specification at page 33, Table 1, and page 35, Table 3. Thus, Example 8 further demonstrates that the claimed wiring harnesses achieve unexpected results.

The Office Action also asserts that "Lewin recognizes the criticality of [specifically utilizing] zinc sulfide." See page 10. Without conceding to the propriety of this assertion, the applied references, including Lewin, do not contain any teachings directed to compatibility with vinyl chloride insulated wires. Thus, achieving better compatibility is completely unexpected over the teachings of the applied references, demonstrating that the claimed wiring harnesses would not have been obvious whether or not a *prima facie* case of obviousness has been made.

The Office Action further asserts that "the showing of unexpected results must be reviewed to see if the results occurred over the entire claimed range." See page 12. However, this purported statement of law is applied out of context. Such a determination should be made when a showing of unexpected results is made to establish the criticality of a narrower range when the prior art teaches a broader range. See MPEP §716.02(d)(II). The broader principle is simply that Applicants' showing of unexpected results must be commensurate in scope with the claims. See MPEP §716.02(d). Here, Applicants' showing of unexpected results is based on the presence of zinc sulfide in the crosslinked flame-retardant composition instead of similar zinc compounds. Claims 5 and 8 specifically require "zinc sulfide." Thus, Applicants' showing of unexpected results is commensurate in scope with the claims. *Id.*, compare *In re Grasselli*, 713 F.2d 731 (Fed. Cir. 1983), where the court held that the

evidence regarding sodium was not commensurate in scope with claims directed to certain catalysts containing an alkali metal.

Regardless, in view of all Examples and Comparative Examples, there is evidence that the compatibility is yielded by using the crosslinked flame-retardant resin composition comprising components (A)-(D) in the amounts recited in claims 5 and 8. Thus, the unexpected results are commensurate in scope with the claims.

For at least these reasons, the applied references would not have rendered obvious claims 5 and 8. Reconsideration and withdrawal of the rejection are respectfully requested.

## **II. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachment:

Declaration Under 37 C.F.R. §1.132

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